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### REMARKS

Applicant respectfully requests reconsideration of the above identified patent application. Claims 1-30 are pending in the application. Claims 1, 4-5, 11-15, 17, 20-22, 24 and 30 are amended to more particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Claims 2, 3, 7, 16, 23 and 25 are cancelled, their subject matter being incorporated into the amended claims. Applicant respectfully traverses the claim rejections as conceivably applied to the amended claims.

#### I. Invention Summary

The present invention is directed to a composite package structure including a paperboard cover and a transparent polymeric tray. The polymeric tray includes a spine that allows the package to fold like a book. The spine is provided with a number of alterations to the typical spine design that prevent the paperboard cover from tearing or binding when closed without giving up structure or visual appeal.

As defined in amended independent claim 1, the polymeric tray includes a first section and a second section that are joined by a flexible spine including opposing ends and a pair of hinges. The paperboard cover is attached to one side of the polymeric tray such that it extends around at least a portion of the flexible spine, and at least a portion of the first and second sections. The cover includes a peripheral edge that extends substantially beyond the opposing ends of the flexible spine.

As defined in amended independent claim 12, the paperboard cover has an interior surface, an exterior surface, and a peripheral edge. The thermoformable polymeric tray

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including a first side, a second side, and a flexible spine having opposing ends. The second side is attached to the interior surface of the paperboard cover, allowing the paperboard cover and the polymeric tray to open and close conjointly like a book. The flexible spine does not extend to the peripheral edge of said paperboard cover, such that said cover extends substantially beyond said opposing ends of said spine.

As defined in amended independent claim 22, the polymeric tray has a spine for closing the book-like package. A second side of the tray is rigidly attached to the paperboard cover by a conventional adhesive. At least a portion of the tray extends to the peripheral edge of the paperboard cover. The flexible spine defines a pair of opposing notches such that said spine does not extend to the peripheral edge of said paperboard cover. The adhesive is not applied to the spine such that the spine may buckle when the package is closed.

As defined in amended independent claim 30, the plastic tray has a peripheral flange and a flexible spine. The flange forms a peripheral wall, and the spine does not extend completely to the peripheral wall. A portion of the plastic tray is attached to the paperboard cover, but that portion does not include the spine. A hinge means is provided on the spine, allowing the spine to buckle when the package is closed.

## II. Section 112 Rejections

As originally filed, claims 1-30 were rejected on the basis of 35 U.S.C. 112, second paragraph. Applicant submits that the Section 112 rejections are overcome in view of the amendments to claims 1, 4, 7, 11, 12, 14, 16, 21, 20, 22, 24 and 30.

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### III. Section 102 Rejections

#### A. Rejection based on Derraugh

As originally filed, claims 1-3, 12, 22-24 and 30 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,769,217 to Derraugh.

Derraugh discloses a compact disc holder for use with a book. The book includes a front cover, a rear cover and a spine that allows the book to open and close. The compact disc holder is mounted in an aperture in the front cover of the book. The compact disc holder also includes a cover and a tray that hold a compact disc in a sandwiched relationship. The compact disc holder opens and closes independent of the book.

With respect to amended independent claim 1, Derraugh does not disclose a paperboard cover that is attached to the second side of a polymeric tray such that the cover extends over at least a portion of the flexible spine, and at least a portion of the first and second sections of the tray. Derraugh is directed to a completely different construction than the present invention. The compact disc holder of Derraugh is mounted in an aperture in the front cover of the book. As a result, the book does not extend around at least a portion of the spine, and at least a portion of the first and second sections joined by the spine. The paperboard cover of the present invention extends a substantial distance beyond the flexible spine, to reduce stress on the spine when the cover and tray are opened and closed. Because of its completely different construction, Derraugh does not accomplish this feature of the present invention, and has no need for it.

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With respect to amended independent claim 12, Derraugh does not disclose attaching the second side of the polymeric tray to the interior surface of the paperboard cover, allowing the cover and tray to open and close conjointly like a book. In contrast, the compact disc holder and book of Derraugh open and close independently, not conjointly.

With respect to amended independent claim 22, Derraugh does not disclose at least a portion of the tray extending to the peripheral edge of said paperboard cover, with the flexible spine defining a pair of opposing notches such that the spine does not extend to the peripheral edge of the paperboard cover. Because the compact disc holder of Derraugh is mounted in an aperture in the book, no portion of the compact disc holder can extend to the peripheral edge of the book.

With respect to amended independent claim 30, Derraugh does not disclose a plastic tray that has a peripheral flange and a flexible spine, wherein the flange forms a peripheral wall, and the spine does not extend completely to the peripheral wall, AND further including a hinge means provided on the spine, allowing the spine to buckle when the package is closed. Derraugh discloses two embodiments of a “spine” for opening and closing the plastic tray. The first embodiment does not disclose a spine that buckles when the package is closed. This embodiment, shown in Figs. 1-9, includes plastic hinges 60, 62 that allow the tray to open and close. The hinges may flex to allow the posts 62 to originally be placed into receiving holes 45, but the hinges do not flex or buckle when the tray is opened and closed. The second embodiment does not disclose a spine that does not extend to the peripheral wall of the tray. As shown in Figs. 12 and 13, this spine includes a “living hinge” that allows the compact disc holder

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to open and close. The living hinge extends completely to the peripheral edges of the compact disc holder.

Because Derraugh does not disclose every element of amended independent claims 1, 12, 22 and 30, Applicant submits that the 102 rejections based on Derraugh are overcome, and/or should be withdrawn.

B. Rejection based on U.S. Published Patent Application to Begim

As originally filed, claims 1 and 3 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Published Patent Application 2004/0163990 to Begim.

Begim discloses a clamshell package including a plastic tray and a paperboard cover. Two halves of the tray are joined by a hinge that allows the package to be folded closed. The hinge extends completely to the peripheral edges of the paperboard cover.

With respect to amended independent claim 1, Begim does not disclose a cover that includes a peripheral edge that extends substantially beyond the opposing ends of the flexible spine. Begim is an example of a package suffering from the disadvantages that the present invention is intended to overcome. Particularly, binding and tearing often occur in the area of the flexible spine when packages such as that disclosed by Begim are repeatedly opened and closed. This is due to the dual layering of paperboard and polymer, because the paperboard is forced to stretch around the inner polymer tray in the area of the spine when the package is closed. By stopping the spine short of the peripheral edge of the paperboard, the present invention provides relief to the paperboard near the peripheral edge to prevent binding and tearing.

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Because Begim does not disclose every element of amended independent claim 1, Applicant submits that the Section 102 rejections based on Begim are overcome and/or should be withdrawn.

C. Rejection Based on U.S. Patent to Burgschweiger

Burgschweiger discloses a book-like container for holding tape-like or disc like articles including a paperboard cover overlying a plastic tray. Burgschweiger shows an extra radius in the paperboard in the area of the spine, such that the paperboard will not be stretched over the polymer when the package is closed. In one embodiment, shown in Fig. 6, the spine extends completely to the peripheral edges of the paperboard. In another embodiment, shown in Fig. 8, it is unclear whether the spine extends completely to the peripheral edge of the paperboard, or if the paperboard slightly overlaps the edge of the tray. In both embodiments, however, the spine extends substantially to the peripheral edge of the paperboard.

With respect to amended independent claim 12, Burgschweiger does not disclose a spine not extending to the peripheral edge of the paperboard cover, such that the cover extends substantially beyond the opposing ends of said spine. With respect to amended independent claim 30, Burgschweiger does not disclose 1) a flange on the tray that forms a peripheral wall, wherein the spine does not extend completely to the peripheral wall, or 2) a hinge means that allows the spine to buckle when the package is closed.

As stated in the Background of the Invention, the Burgschweiger design may eliminate the tearing and binding problems suffered by most paperboard/plastic tray packages, but it loses some of the structure that the composite package design was intended to provide. By

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stopping the spine substantially short of the peripheral edge of the paperboard (i.e. as shown in Fig. 5 of the present application), as defined in claim 12, and by stopping the spine short of the peripheral wall of the tray, as defined in claim 30, the present invention solves the tearing and binding problems without sacrificing structure. Applicant submits that Burgschweiger teaches directly away from the present invention, by teaching the increasing of the radius of the paperboard spine to extend around the spine of the plastic tray, instead of the solution taught by the present invention. The present invention provides advantages over this alternative teaching, in that it does not sacrifice as much structure, and is less cumbersome.

Because Burgschweiger does not disclose every element of amended independent claims 12 and 30, Applicant submits that the Section 102 rejections based on Burgschweiger are overcome, and/or should be withdrawn.

#### IV. Section 103 Rejections

##### A. Rejection based on Begim and Burgschweiger in view of Elliott

As originally filed, claims 22-24 were rejected under 35 U.S.C. 103 as being unpatentable over Begim and Burgschweiger in view of U.S. Patent 3,487,919 to Elliot.

Elliot discloses a paperboard cover and a polymeric tray. The paperboard includes crease lines for folding the package. The tray does not have a spine, and does not extend into the spine region (i.e. between the crease lines) of the paperboard cover.

It is asserted that Elliot discloses joining a polymeric tray to a paperboard cover with a conventional adhesive, and that the adhesive is not applied to the spine area, and that it would have been obvious to modify either Begim or Burgschweiger employing the adhesive

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teaching of Elliot. As applied to amended claim 22, Applicant respectfully disagrees with this assertion. Because Elliot does not disclose a spine on the plastic tray, it completely fails to suggest a construction including a spine on the plastic tray that is not adhered to the paperboard cover.

In addition, Applicant submits that Elliot, Begin and Burgschweiger, cannot be modified or combined to achieve every element of amended independent claim 22. In particular, none of the references disclose a flexible spine that defines a pair of opposing notches such that said spine does not extend to the peripheral edge of said paperboard cover. Elliott does not include a spine on the tray. Begin and Burgschweiger disclose spines that extend completely to the peripheral edge of the plastic tray. As a result, Applicant submits that the Examiner has not presented a *prima facie* case with respect to amended claim 22.

Because Begin, Burgschweiger and Elliott do not disclose, teach or suggest achieve every element of the present invention, Applicant submits that the Section 103 rejection based on Begin, Burgschweiger and Elliott is overcome, and/or should be withdrawn.

B. Rejection based on Burgschweiger and Elliott in view of Derraugh and Begin

Claim 24 was rejected under 35 U.S.C. 103 as being unpatentable over Burgschweiger and Elliott in view of Derraugh and Begin.

It is asserted that Derraugh and Begin disclose cut-outs in polymeric trays, and that it would have been obvious to modify Burgschweiger employing the cut-out of Derraugh or Begin to achieve the present invention.



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Applicant submits that the combination of Burgschweiger and Elliott in view of Derraugh and Begim does not resolve the above noted inadequacies of these references individually, as discussed above with respect to amended independent claim 22, from which claim 24 depends. In particular, none of the references disclose, teach or suggest at least a portion of the tray extending to the peripheral edge of said paperboard cover, and the flexible spine defining a pair of opposing notches such that the spine does not extend to the peripheral edge of the paperboard cover.

Additionally, there is no basis in the art to suggest modifying or combining these references. Elliott does not even disclose a spine. Derraugh discloses a completely different construction, wherein the paperboard is not even layered over the plastic tray. Begim and Burgschweiger disclose plastic spines that extend completely to the peripheral edge of the plastic tray, and substantially to the edges of the paperboard. Nothing suggests defining notches in the flexible spine so the spine does not extend to the edge of the paperboard. As mentioned above, Burgschweiger teaches directly away from this construction, by teaching the addition of an increased radius on the paperboard.

C. Rejection based on Burgschweiger, Elliott, Derraugh and Begim in view of Barnhart and Kallenbach

Claims 4-9, 13-21 and 25-29 were rejected under 35 U.S.C. 103 as being unpatentable over Burgschweiger, Elliott, Derraugh and Begim in view of U.S. Patent 4,240,544 to Barnhart and U.S. Patent 4,901,884 to Kallenbach.

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It is asserted that Kallenbach and Barnhart disclose a flexible spine provided with notches to facilitate closing the package, and that it would have been obvious to combine this teaching with that of the previous references to achieve the present invention.

Barnhart and Kallenbach both disclose packages that fold like a book, and are comprised of a single layer of thermoformed plastic material. Both packages are foldable about a plastic hinge section, and the hinge sections of each reference include notches at the opposing ends. The notches help the plastic packages to have smooth hinges and edges when are closed so the exposed plastic edges are safe.

Applicant submits that there is no motivation or suggestion in the prior art, other than impermissible hindsight, for modifying or combining Barnhart and Kallenbach with Begim, Burgschweiger, Derraugh or Elliott to achieve the present invention. Barnhart and Kallenbach disclose plastic packages – they do not include paperboard covers as defined by the present invention. As a result, Barnhart and Kallenbach completely fail to recognize the problem solved by the present invention. Barnhart and Kallenbach provide notches in the plastic packages to create safe packaging, because the edges of the plastic hinges will be exposed in the completed package. In contrast, the present invention has no need for smooth plastic edges, because the plastic is covered by paperboard. Further, the notched hinges of Kallenbach and Barnhart are tapered, “coming to zero height to blend into the flange plane at the main cut trim line.” Kallenbach, column 1, lines 67-68. This construction teaches away from the present invention, because it would not provide the underlying structure for the paperboard cover that the present invention provides.

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In addition, Applicant submits that Barnhart and Kallenbach cannot be combined with Begim, Derraugh, Burgschweiger or Elliot, because the intended function of Barnhart and Kallenbach would be destroyed. Barnhart and Kallenbach disclose packages that are designed to function, and be aesthetically pleasing, without the use of a paperboard cover extending over some or all of the plastic container. Adding a paperboard cover to the products disclosed in either of these references would destroy the intended function of a plastic only package.

Because none of the cited references teach or suggest the subject matter of the amended claims, Applicant submits that the rejections under Section 103 are overcome and/or should be withdrawn.

D. Rejection Based on Burgschweiger in view of Derraugh or Begim

Claim 14 was rejected under 35 U.S.C. 103 as being unpatentable over Burgschweiger as applied to claim 13 above, and further in view of Derraugh or Begim.

It is asserted that Derraugh and Begim disclose cut-outs employed with transparent polymeric trays, and that it would have been obvious to modify Burgschweiger employing the cut-out teaching of either Derraugh or Begim in order to allow the contents to be viewed from outside the container.

Applicant submits that, as discussed above, Burgschweiger, Derraugh and Begim do not disclose, teach or suggest the subject matter of amended independent claim 12, from which claim 14 depends. In particular, none of the references disclose a tray attached to the interior surface of the paperboard cover, wherein the tray includes a spine not extending to the

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peripheral edge of said paperboard cover, such that the cover extends substantially beyond the opposing ends of the spine.

Because Burgschweiger, Derraugh and Begim do not disclose, teach or suggest every element of amended independent claim 12, Applicant submits that the Section 103 rejection based on these references is overcome, and/or should be withdrawn.

E. Rejection Based on Art Applied to Claim 4 in view of Begim and Burgschweiger and further in view of Elliott

Claims 5-11 and 15-21 were rejected under 35 U.S.C. 103 as being unpatentable over the art applied to claim 4 in view of Begim and Burgschweiger and further in view of Elliott.

It is asserted that Elliott discloses a cover adhered to a tray by conventional adhesive disposed between the tray and the cover, and that the choice of adhesive would have been a matter of degree.

Applicant submits that Elliott does not resolve the above noted inadequacies of the references as applied to amended independent claims 1 and 12. With respect to claim 1, none of the references disclose, teach or suggest a paperboard cover that extends around a portion of the flexible spine, and a portion of the first and second sections of the tray, wherein the paperboard cover extends substantially beyond the opposing ends of the spine. With respect to claim 12, none of the references disclose a tray attached to the interior surface of the paperboard cover, wherein the spine of the tray does not extend to the peripheral edge of the paperboard cover, such that the cover extends substantially beyond the opposing ends of the spine.

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Because the applied references do not disclose, teach or suggest every element of amended independent claim 12, Applicant submits that the Section 103 rejection based on these references is overcome, and/or should be withdrawn.

V. Dependent Claims

The dependent claims not previously discussed depend from amended independent claims 1, 12, 22 or 30, and are therefore even more clearly allowable. Claim 4 recites that a portion of the tray other than the flexible spine extends to the peripheral edge of the paperboard cover, such that the spine defines a pair of opposing notches in the tray. Claim 5 recites that the cover is conventionally adhered to the polymeric tray at the peripheral edge of the cover with a conventional adhesive, the adhesive not applied to the flexible spine such that the flexible spine may buckle when the package is closed. Claims 6 and 26 recite that the polymeric tray includes a peripheral flange, the adhesive disposed between the flange and the peripheral edge of the cover. Claims 8, 18 and 27 recite printed graphics on the surface of the paperboard cover opposite the polymeric tray. Claim 9, 19 and 28 recite that the conventional adhesive is an RF seal applied through the polymeric tray. Claims 10, 20 and 29 recite that the article holding means are recesses in the first side of the tray, the recesses capable of enclosing an article when the package is closed. Claim 11 recites that the tray further includes a step on one side of the flexible spine and a recess on the other side, the step engaging the recess to facilitate holding the package closed. Claim 13 recites that the spine defines opposing notches in said tray. Claims 14 and 24 recite at least one cut-out in the paperboard cover, such that the second side of the polymeric tray is exposed through the at least one cut-out and an article is visible through the

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tray and the at least one cut-out. Claim 15 recites that the polymeric tray includes a peripheral flange, the flange attached to the peripheral edge of the paperboard cover with a conventional adhesive. Claim 17 recites that the polymeric tray includes means for latching the package closed. Claim 21 recites a cut-out in the at least one recess, the cut-out facilitating removal of an article from the at least one recess.

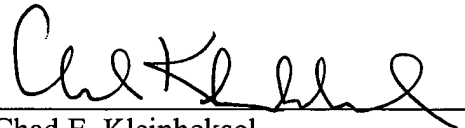
VI. Conclusion

In view of the claim amendments and these remarks, Applicant submits that the present invention is in condition for allowance. A notice to that effect is respectfully and earnestly requested. The Examiner is invited to contact the undersigned by telephone should the Examiner feel that additional changes are necessary to place the application in allowable form.

Respectfully submitted,

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